AREA SOURCE TOOL SELECTION GUIDE:

A Review of Permitting Options for Implementing Area Source Rules

EPA's area source rules limit toxic air emissions from certain sectors that contribute to health threats in urban areas. The area source categories include some groups of facilities, such as auto body shops, boilers, dry cleaners, and gas stations, which are characterized by large numbers of small entities. States and EPA regions charged with implementing the area source rules need to find approaches to ensure compliance with the federal air toxics standards that are effective, efficient, and practical. This guide discusses four permitting/compliance monitoring approaches for implementing area source rules: general permits, permits-by-rule, the Environmental Results Program (ERP), and hybrid approaches.

GENERAL PERMITS

General permits are applicable to a class or category of facilities with generally similar characteristics. The state develops permit conditions that apply to all facilities within the regulated sector. Facilities apply to be covered under by demonstrating compliance with the permit terms.

PERMITS-BY-RULE

Permits-by-rule are quite similar to general permits, in that they are generally intended to cover multiple, similar, small sources of emissions. The requirements for an area source operating under a permit-by-rule are written into state regulations. A source must determine if it meets the criteria for operating under a permit-by-rule and then operate in compliance with the requirements.

ENVIRONMENTAL RESULTS PROGRAM (ERP)

ERP is an innovative approach to improving the environmental performance for sectors or groups of regulated entities characterized by large numbers of small, relatively similar facilities. ERP combines plain language compliance assistance that promotes pollution prevention; facility self-assessment and self-certification tools; agency inspections; and statistically based performance measurement. Where necessary, regulators also conduct a comprehensive facility inventory and targeted enforcement actions.

HYBRID APPROACHES

A state may incorporate elements from these different approaches based on the state's specific resources and goals. For example, a state could incorporate a general permit requirement into an ERP. Another state could choose to use a permit-by-rule but add statistically based inspections borrowed from ERP to better measure demonstrate progress.

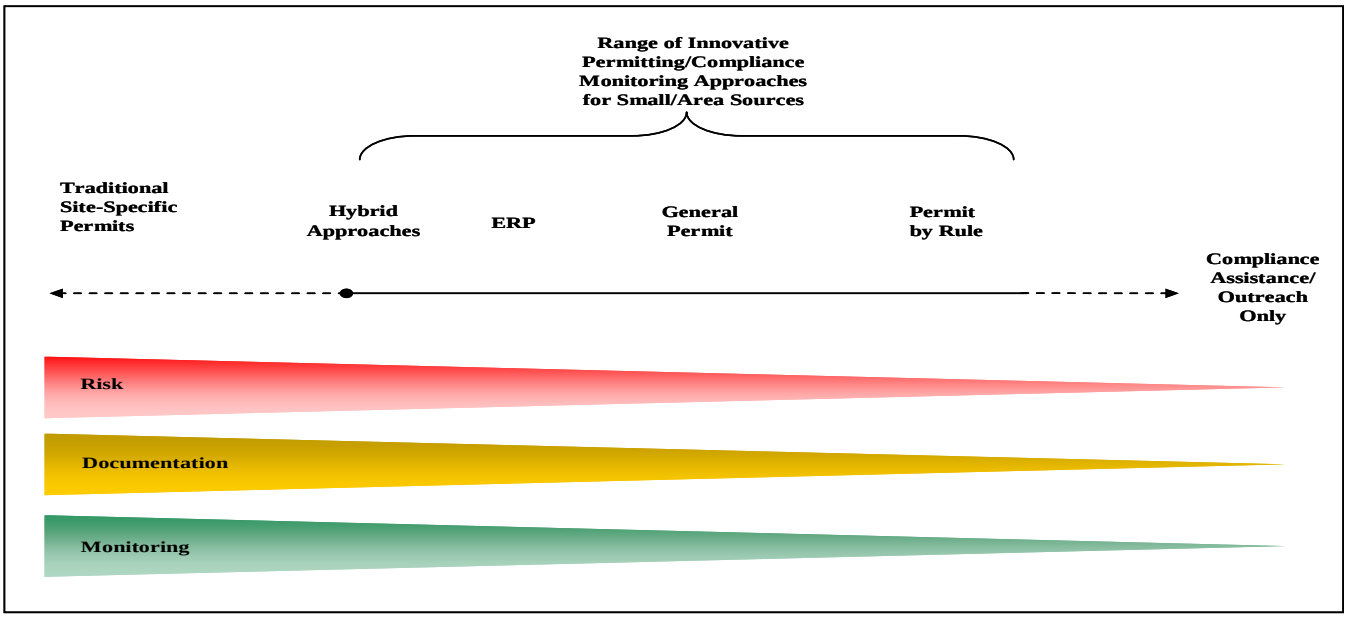
KEY PROGRAM CHARACTERISTICS

State agencies may try to achieve the following key functions through their programs:

1. Alert facilities to program requirements;
2. Offer compliance assistance;
3. Obtain documentation of facility compliance;
4. For facilities out of compliance, obtain documentation of facility plans to achieve compliance;
5. Enable onsite inspectors to determine whether facility is in compliance;
6. Measure changes in performance;
7. Reassess facility performance and update requirements, through renewal; and
8. Conduct targeted assessments and enforcement (e.g., based on inspector or citizen complaints).

Regulators may choose from a spectrum of permitting/compliance monitoring approaches, with the following considerations: **RISK, DOCUMENTATION, AND MONITORING**

SPECTRUM OF PERMITTING/COMPLIANCE MONITORING APPROACHES



Facilities or sectors that pose greater environmental risk generally require relatively more documentation and relatively greater compliance monitoring. Where the risk is less, relatively less documentation and monitoring are necessary. A program's placement on this spectrum depends on the specific design of the tool.

MOTIVATIONS FOR SELECTING PERMITTING/COMPLIANCE MONITORING APPROACHES

States select an approach because they feel it is the best option to achieve their goals at the lowest cost to the agency and the regulated community. Program selection is also informed by agency history and experience, agency resources, sector size, perceived risk of environmental and health impacts, and the geographic span of their territory.

ADVANTAGES AND DISADVANTAGES OF EACH PERMITTING/COMPLIANCE MONITORING APPROACH

General Permits

The state only has to develop one permit for all facilities, but they allow for less flexibility. The permit application process is easier and requires fewer resources than a site-specific permit.

Permits-by-Rule

There is a minimal burden on both state agencies and regulated facilities, and facilities can construct and update the permit relatively easily. However, if notification is not included, facilities may not be aware of their requirements, and there is a greater chance that older facilities are operating with non-compliant technology.

ERP

ERPs are well-suited to deal with multi-media issues, they simplify the process, and they provide the opportunity to measure performance for the whole sector. However, ERPs can require more staff time and resources to implement than general permits or permits-by-rule.

Hybrid Approaches

Both the advantages and disadvantages of these approaches depend on the tools combined. For example, combining ERP with a general permit may offer the benefits of compliance monitoring, with the requirement that a facility submit a self-certification form (which serves as a permit).

RECOMMENDED CONSIDERATIONS FOR SELECTING PERMITTING/COMPLIANCE MONITORING APPROACHES AND POLICY TOOLS

States that are considering developing permitting/compliance monitoring approaches to address area source rules may choose between several approaches, and a range of specific policy tools to meet their goals.

There is a range of factors that could influence an agency's choice of policy tools:

Agency goal(s). An important first step in selecting an approach or policy tool is to understand the agency's goal(s) for the program. For example, is the agency seeking to achieve measureable behavior changes in the sector, ensure that all facilities have a permit because it is required by state law to achieve environmental results, and/or implement federal requirements (such as those included in the area source rules)?

Regulatory framework. Given the state's statutory framework, regulations, and history, states may have different sets of policy tools that they can use to achieve their goals. For example, some states have a regulatory framework in place for general permits or permits-by-rule, while in other states such permitting mechanisms may not be readily available.

Level of environmental protection. Ideally, the level of risk that a facility poses would match the attention that it receives from the regulator and the level of action the facility takes to ensure compliance.

Number of facilities. Certain policy tools are well suited to efficiently address a large number of facilities. For example, statistically based inspections and permits-by-rule can be used cost effectively in sectors with a large number of businesses.

Similarity of operations. Although area source rules generally address sectors with similar operations, there are gradations in the degree of similarity within a given sector. Where states anticipate a range of different equipment or operations in a sector, they will need to be able to carefully define these different categories of facilities and explain the requirements that apply to each.

Size of facility operations. The relative amount of resources available to a facility can influence the degree to which it can participate in various program options.

Knowledge and expertise on site. Regulators should consider the knowledge and expertise of the staff on site at the facilities, as this will influence the amount of assistance the facility may need to participate in the chosen program.

Agency resources. The regulator should also consider the resources that it has to expend on the regulatory effort. During program development, all three approaches may require significant effort; once program implementation has begun, permits-by-rule generally seem to require the least resources and staff time, while ERPs and general permits require more attention and staff time to implement, depending on the specific requirements of the program.

Economies of scale. While it is likely not appropriate for regulators to choose a single approach for all area source rules, there may be economies of scale if a state commits to investing in a certain permitting/compliance monitoring approach for a number of area source rules.